



Priority  
Send ☒  
Enter ☒  
Closed ☐  
JS-5/JS-6 ☐  
JS-2/JS-3 ☐  
Scan Only ☐

*Neil*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RENEE PINZ,

Plaintiff,

v.

BATH AND BODY WORKS,  
INC., and DOES 1 through  
20, inclusive,

Defendants.

CV 03-2160 RSWL (CWx)

ORDER DENYING  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE  
PLEADINGS FOR FAILURE  
TO STATE A CLAIM UPON  
WHICH RELIEF CAN BE  
GRANTED

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d)

Presently before the Court is Defendant Bath and Body Works, Inc.'s Motion for Judgment on the Pleadings. After considering the papers and arguments filed in support of and in opposition to this Motion, the Court hereby **DENIES** Defendant's Motion.

As a preliminary matter, Defendant asks this Court to take Judicial Notice of documents filed in this case in state court. This Court **GRANTS** this Request.

1 Under California law, the statute of limitations does  
2 not begin to run merely because a plaintiff has knowledge of  
3 an injury and its cause. Ward v. Westinghouse Canada, Inc.,  
4 32 F.3d 1405, 1407 (9th Cir. 1994). Although a plaintiff  
5 has determined the factual cause of her injuries, she is not  
6 on notice until she is or should be aware that the cause was  
7 due to the defendant's wrongdoing. Id. at 1408.

8  
9 Plaintiff knew at the date of the fire that the  
10 decedent died from a fire caused by candles placed on the  
11 countertop. However, it is not clear from the face of the  
12 pleadings that Plaintiff had reason to know of Defendant's  
13 involvement in the fire before the site investigation.  
14 Therefore, under California law, this Court must assume for  
15 purposes of Judgment on the Pleadings that the statute did  
16 not begin to run until January 24, 2003, and thus that  
17 Plaintiff's First Amended Complaint was filed within the  
18 limitations period.

19  
20 Although the question of whether Plaintiff filed within  
21 the limitations period may properly be the subject of a  
22 later motion, it cannot be resolved on the pleadings. This  
23 Court **DENIES** the Motion for Judgment on the Pleadings on  
24 this ground.

25  
26 Accordingly, Plaintiff also did not need to substitute

1 Defendant for an original "Doe" defendant to meet the  
2 limitations period. This requirement is only significant if  
3 Plaintiff wished the benefit of the "relation back" doctrine  
4 to avoid the statute of limitations. California Code Civ.  
5 Proc. § 474; See also Ingram v. Superior Court for County of  
6 Sutter, 98 Cal. App. 3d 483 (1979). Plaintiff does not  
7 argue that she is entitled to have her amended complaint  
8 "relate back" for limitations purposes. This Court **DENIES**  
9 the Motion for Judgment on the Pleadings on this ground, as  
10 well.

11  
12 Finally, Defendant is correct that a District Court may  
13 strike false or sham pleadings. See Ellingson v. Burlington  
14 Northern, Inc., 653 F.2d 1327, 1329-1330 (9th Cir. 1981).  
15 This includes allegations in a pleading which are  
16 inconsistent with those in a prior pleading. Bradley v.  
17 Chiron Corp., 136 F.3d 1317 (Fed. Cir. 1998).

18  
19 However, an inconsistent allegation is not  
20 automatically a "sham." Although the allegations of the  
21 First Amended Complaint contradict those of the original

22 ///

23 ///

24 ///

25 ///

1 complaint, there is no indication that they constitute a  
2 "false" or "sham" pleading. This Court therefore **DENIES** the  
3 Motion for Judgment on the Pleadings on this basis, as well.

4  
5 **IT IS SO ORDERED.**

RONALD S.W. LEW

6  
7 RONALD S.W. LEW  
United States District Judge

8 DATED: 8-25-03  
9 (orders\pinz.jonp\w)